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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,867	05/08/2007	Pascal Del Gallo	Serie 6356	2236

40582 7590 06/02/2010

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EXAMINER	
NGUYEN, KHANH TUAN	
ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
06/02/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/577,867	DEL GALLO ET AL.	
	Examiner	Art Unit	
	KHANH T. NGUYEN	1796	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 24 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☒ Applicant's reply has overcome the following rejection(s): The provisional rejection of claims 30, 32, 33, 35, and 50 on the ground of non-statutory obviousness-type double patenting over copending App. No. 11/049,586 is withdrawn in view of the terminal disclaimer filed on 05/24/2010. The objection to claims 35 and 41-44 are rendered moot in view of applicant's amendment and/or cancellation. The rejection of claims 30-33, 35, and 50 under 35 USC 112, second paragpgraph, due to improper Markush form is rendered moot in view of applicant's amendment.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *30-33,35,46 and 50*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Mark Kopec/
Primary Examiner, Art Unit 1796

U.S. Patent and Trademark Office
PTOL-303 (Rev. 08-06) **Advisory Action Before the Filing of an Appeal Brief** Part of Paper No. 20100530

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed on 05/24/2010 have been fully considered but they are not persuasive.

In response to the applicant's remark on page 7, second full paragraph, applicant argues that the combination of Shen and Chaput does not disclose each and every claim limitation. The applicant specifically argues that the examiner relies upon Chaput for its putative disclosure of magnesium oxide. Chaput does not disclose MgO. Rather, Chaput discloses a fluorite crystal of formula (MαOβ)l-x(RγOδ)x in which the M may be Mg (1]s 51,48). Thus, one possibility is a fluorite crystal of formula (MgαOβ)l-x(RγOδ)x. This is not a disclosure of the compound magnesium oxide as required by the claims. Thus, applicant request withdrawal of the rejection. The examiner respectfully disagrees withapplicant's argument. First, the applicant has misinterpreted the examiner's position in the previous Office action, mailed on 02/23/2010. The examiner did not relied upon Chaput for the teaching of magnesium oxide as alleged. Rather, the examiner relied upon Chaput for the teaching of a perovskite compound having a formula of LauSrvFecOw as required in claim 30 (See Page 8, second full and third full paragraphs, of the previous Office action mailed on 02/23/2010). In the previous Office action, the examiner concluded that it would have been obvious for a skilled artisan to have a reasonable expectation of success for substituting the ceramic material of Shen with the perovskite compound (LauSrvFecOw) of Chaput. The examiner did not relied upon Chaput for the teaching of magnesium oxide as alleged, otherwise the examiner would have concluded that it would have obvious for a skilled artisan to substitute a component of Shen with the magnesium oxide of Chaput. Additionally, Chaput discloses a discloses a ceramic oxides of formula MαOβ can be doped with one or more oxides selected from a group including magnesium oxide (MgO) [0051]. The magnesium oxide (MgO) dopant is fulfills the claimed magnesium oxide of compound (C2). Therefore, the combination of Shen and Chaput disclose each and every claim limitation and the rejection of claims 30-33, 35, 46, and 50 under 35 U.S.C. 103(a) over Shen and Chaput is maintained for the reasons of record. The rejection of claims 41-44 under 35 U.S.C. 103(a) over Shen and Chaput is rendered moot in view of the instant cancellation.

At page 7, third full paragraph, of the remark, applicant also argues that the combination of Mackey and Chaput does not disclose each and every claim limitation. The applicant specifically argues that the examiner relies upon Chaput for its putative disclosure of magnesium oxide. As explained above, Chaput does not disclose MgO. Thus, applicant's request withdrawal of the rejection. The examiner respectfully disagrees with the applicant argument. As explained above, the applicant has misinterpreted the examiner's position in the previous Office action, mailed on 02/23/2010. The examiner did not relied upon Chaput for the teaching of magnesium oxide as alleged. Rather, the examiner relied upon Chaput for the teaching of a perovskite compound having a formula of LauSrvFecOw as required in claim 30 (See connecting Pages 9-10 of the previous Office action mailed on 02/23/2010). In the previous Office action, the examiner concluded that it would have been obvious for a skilled artisan to have a reasonable expectation of success for substituting the brown-millerite material or Mackey with the perovskite compound having a formula of LauSrvFecOw as suggested by Chaput for the same utility and the result would have been predictable. Clearly, the examiner did not relied upon Chaput for the teaching of magnesium oxide as alleged, otherwise the examiner would have concluded that it would have obvious for a skilled artisan to substitute a component of Mackey with the magnesium oxide of Chaput. Furthermore, as explained above, Chaput discloses a magnesium oxide (MgO) dopant that fulfills the claimed magnesium oxide of compound (C2). Therefore, the combination of Mackey and Chaput disclose each and every claim limitation and the rejection of claims 30-33, 35, 46, and 50 under 35 U.S.C. 103(a) over Mackey and Chaput is maintained for the reasons of record. The rejection of claims 41-44 under 35 U.S.C. 103(a) over Mackey and Chaput is rendered moot in view of the instant cancellation.

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